

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

FRANKLIN CHARLES SMITH,

Petitioner,

v.

3:05-cv-342

JUDGE CHUCK CERNY,

Respondent.

**MEMORANDUM AND ORDER**

This is a petition for the writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner's application to proceed *in forma pauperis* is **GRANTED**. The Clerk is **DIRECTED** to file this action without prepayment of costs or other fees as of the date the petition was received and to serve a copy of the petition and this Order on the Attorney General of the State of Tennessee by certified mail. However, for the reasons stated below, the Attorney General shall not be required to file an answer or other pleading to the petition and this petition is **DENIED**.

Petitioner challenges his continued confinement in the Knox County Detention Facility based upon misdemeanor convictions out of the General Sessions Court for Knox County, Tennessee. He states that his appeals are still pending, and that he has post-conviction motions pending in the sessions court.

A state prisoner's petition for a writ of habeas corpus cannot be granted by a federal court unless the petitioner has exhausted his available state court remedies. 28 U.S.C. § 2254. This rule has been interpreted by the Supreme Court as one of total exhaustion. *Rose v. Lundy*, 455 U.S. 509 (1982). Thus, each and every claim set forth in the federal habeas corpus petition must have been presented to the state appellate court. *See also Pillette v. Foltz*, 824 F.2d 494, 496 (6th Cir. 1987) (exhaustion "generally entails fairly presenting the legal and factual substance of every claim to all levels of state court review").

It is obvious that petitioner did not exhaust his state remedies before seeking federal habeas corpus relief. Accordingly, his petition is **DENIED** and this action is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust state remedies. Rule 4 of the RULES GOVERNING SECTION 2254 CASES IN THE UNITED STATES DISTRICT COURTS. The Clerk is **DIRECTED** to notify the petitioner of this Order and to close this file. A certificate of appealability **SHALL NOT ISSUE** in this action.

In addition to the above, this Court has carefully reviewed this case pursuant to 28 U.S.C. § 1915(a) and hereby **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, this Court hereby **DENIES** the petitioner leave to proceed *in forma pauperis* on appeal. *See* Rule 24 of the FEDERAL RULES OF APPELLATE PROCEDURE.

**E N T E R:**

s/ Leon Jordan  
United States District Judge